IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 30178 of 2007(P)

PETITIONER:

SURESH KUMAR, S/O.CHOYI,
VAILIPPATT HOUSE, IRINGAVOOR P.O.,
TIRUR, MALAPPURAM.

BY ADV. SRI.T.KRISHNAN UNNI
SRIC.M.MOHAMMED IQUABAL

RESPONDENTS:
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1. THE TAHSILDAR, TALUK OFFICE,
TIRUR, MALAPPURAM.

2. THE SUB INSPECTOR OF POLICE,
KALPAKANCHERRY POLICE STATION,
KALPAKANCHERRY.

3. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION,
MALAPPURAM.

BY GOVERNMENT PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007, ALONG WITH WPC NO. 30745 OF 2007, THE COURT ON 20/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) NOs. 30178 & 30745 OF 2007

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Dated this the 20th day of November, 2007

J U D G M E N T

Ext.P4 in WPC No.30178/07 and Ext.P5 in WPC No.30745/07 are orders issued by the 3rd respondent, District Collector, Malappuram exercising his powers under Rule 27 of the Protection of River Banks and Regulation of Removal of Sand Act and Rules, 2001.

2. By these orders, the vehicles involved were found to have been used for the unauthorised transportation of river sand and on that basis, value of Rs.35,000/- each and penalty of Rs.50,000/- each is ordered to be remitted to the River Management Fund.

3. The vehicles in question were seized by the 1st respondent-Tahsildar on finding that they were unauthorisedly transporting river sand and it is thereupon that the matter reached the 3rd respondent for orders under Rule 27. It is stated in the impugned orders that the petitioner had given applications dated 26.9.07, in which he has confessed that river sand was

loaded without obtaining a pass. This alleged confession seems to be the whole basis on which petitioner is held guilty.

4. When the learned counsel for the writ petitioner asserted before this court that the petitioner had not made any such confession as is wrongly stated in the impugned orders, I had directed the learned Government pleader to make available the files. Accordingly, the files were made available and applications dated 26/9/07 referred to in the impugned orders have been perused.

5. In so far as the truck KL-9/6376 is concerned, it is stated in the application that when the sand in question was originally loaded from the kadavu, there was a valid pass for the transportation proceedings. It is stated that thereafter the sand was transferred to the petitioner's truck and it was at that time the vehicle was intercepted and detained. In the statement he would proceed to state that the did not have a pass for transporting the same.

6. Therefore, it is evident that what the petitioner had stated in the application dated 26/9/07 is that though the river sand was accompanied with a pass at the time when it was transported, it did not have a pass after it was transferred from the original lorry to his lorry. This contention is not seen properly appreciated in the impugned orders, which proceeds as though the sand in question was transported without a pass right from the inception.

7. In so far as the vehicle KL-10 B/905 is concerned, there also, what the petitioner has stated in the application dated 26/9/07 is that the sand was accompanied with a pass, but it was transferred to the petitioner's vehicle thereafter. Thus, even according to the petitioner for transporting river sand in his truck, there was no pass.

8. The statement referred to above cannot be taken as one where the petitioner has confessed that there was no pass at all. Therefore, in this case also, a reading of Ext.P5 order of the

3rd respondent shows that there has not been a proper appreciation of what has been stated in the application made by the petitioner. It is in this context the counsel for the petitioner would also submit that these orders were passed without affording him an opportunity of hearing. It is contended that if an opportunity was afforded to the petitioner, he would have had a chance to explain to the 3rd respondent about his innocence.

9. In my view, the petitioner is justified in his contentions. As I have already found, the impugned orders do not reflect a proper appreciation of what has been stated in the applications filed by the petitioner on 26/9/07. I also find force in the confession of the petitioner that had he be given a chance to explain the matter in person, he could have effectively defended himself. Therefore, the order is also bad for violation of the principles of natural justice, compliance of which has been held to be mandatory by a Division Bench of this court.

10. In view of the above Ext.P4 in WP(C) No.30178/07

and Ext.P5 in WP(C) No.30745/07 will stand quashed. The 3rd respondent shall reconsider the matter after affording an opportunity of hearing to the petitioner. This the 3rd respondent shall do, as expeditiously as possible, at any rate within 2 weeks of receipt of a copy of this judgment.

11. In the meanwhile, it will be open to the petitioner to make an application to the 3rd respondent for interim custody of the vehicle. If any such application is filed by the petitioner, it will be open to the 3rd respondent to consider the same. If it is found that the petitioner is entitled for such interim custody, it will also be open to the 3rd respondent to impose such conditions as are necessary for safeguarding the interest of the respondents.

Writ petitions are disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp